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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

JEFF HATCH-MILLER, Chairman
WILLIAM A. MUNDELL
MARC SPITZER
MIKE GLEASON
KRISTIN K. MAYES

Arizona Corporation Commission

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JUN 22 2005

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AZ Corporation Commission
Director Of Utilities

IN THE MATTER OF THE APPLICATION OF
BULLSEYE TELECOM, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD LOCAL
EXCHANGE SERVICES AND FOR
COMPETITIVE CLASSIFICATION OF ITS
SERVICES.

DOCKET NO. T-04276A-05-0084

DECISION NO. 67949

ORDER

Open Meeting
June 14 and 15, 2005
Phoenix, Arizona

BY THE COMMISSION:

Having considered the entire record herein and being fully advised in the premises, the Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

FINDINGS OF FACT

1. On February 10, 2005, BullsEye Telecom, Inc. ("Applicant" or "BullsEye") filed with the Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide competitive resold local exchange telecommunications services within the State of Arizona.

2. Applicant is a switchless reseller that purchases telecommunications services from a variety of carriers for resale to its customers.

3. In Decision No. 58926 (December 22, 1994), the Commission found that resold telecommunications providers ("resellers") are public service corporations subject to the jurisdiction of the Commission.

4. BullsEye has authority to transact business in the State of Arizona.

5. On April 7, 2005, the Commission's Utilities Division Staff ("Staff") filed a Staff Report recommending approval of the application, subject to certain conditions.

6. On April 29, 2005 BullsEye filed an Affidavit of Publication verifying that it had published notice of its application that complies with the Commission's notice requirements.

7. In the Staff Report, Staff stated that BullsEye provided unaudited financial statements for the twelve months ending December 31, 2003, which list assets of \$11,122,457, equity of \$2,827,959, and net income of \$1,508,291.

8. In its Staff Report, Staff stated that based on information obtained from the Applicant, it has determined that BullsEye's fair value rate base ("FVRB") is zero and is not useful in either a fair value analysis or in setting rates. Staff further stated that in general, rates for competitive services are not set according to rate of return regulation. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to several local exchange companies operating in Arizona and comparable to the rates the Applicant charges in other jurisdictions. Therefore, while Staff considered the FVRB information submitted by the Applicant, that information should not be given substantial weight in this analysis.

9. Staff believes that BullsEye has no market power and that the reasonableness of its rates will be evaluated in a market with numerous competitors. Staff believes that the rates in Applicant's proposed tariffs for its competitive services will be just and reasonable and recommends that the Commission approve them.

10. Staff recommended that BullsEye's application for a Certificate to provide competitive resold local exchange telecommunications services be granted subject to the following conditions:

- (a) that, unless it provides services solely through the use of its own facilities, Applicant be ordered to procure an Interconnection Agreement, within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, that must remain in effect until further order of the Commission, before being allowed to offer local exchange service;
- (b) that Applicant be ordered to file with the Commission, within 365 days of the effective date of the Order in this matter or 30 days prior to the provision of service, whichever comes first, its plan to have its customers' telephone numbers included in the incumbent's Directories and Directory Assistance databases;
- (c) that Applicant be ordered to pursue permanent number portability arrangements with other LECs pursuant to Commission rules, federal laws and

federal rules;

- (d) that Applicant be ordered to abide by and participate in the AUSF mechanism instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-T-00000E-95-0498);
- (e) that Applicant be ordered to abide by the quality of service standards that were approved by the Commission for Qwest in Docket No. T-0151B-93-0183;
- (f) that Applicant be prohibited from barring access to alternative local exchange service providers who wish to serve areas where the Applicant is the only provider of local exchange service facilities;
- (g) that Applicant be ordered to certify, through the 911 service provider in the area in which it intends to provide service, that all issues associated with the provision of 911 service have been resolved with the emergency service providers within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, which certification must remain in effect until further Order of the Commission;
- (h) that Applicant be ordered to abide by all the Commission decisions and policies regarding CLASS services;
- (i) that Applicant be ordered to provide 2-PIC equal access;
- (j) that Applicant be required to notify the Commission immediately upon changes to its address or telephone number;
- (k) that Applicant be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
- (l) that Applicant be ordered to maintain its accounts and records as required by the Commission;
- (m) that Applicant be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- (n) that Applicant be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- (o) that Applicant be ordered to cooperate with Commission investigations including, but not limited to, customer complaints;
- (p) that Applicant be ordered to participate in and contribute to a universal service fund, as required by the Commission; and
- (q) that Applicant be subject to the Commission's rules and the 1996 Telecommunications Act to the extent that they apply to CLECs.

11. Staff further recommended that BullsEye's resold local exchange Certificate should be conditioned upon the Applicant filing conforming tariffs for each Certificate in accordance with this Decision within 365 days from the date of an Order in this matter, or 30 days prior to providing

1 service, whichever comes first, and in accordance with the Decision.

2 12. Based on BullsEye's indication that it collects from its customers an advance, deposit,
3 and/or prepayment, Staff also recommended the following:

- 4
- 5 (a) that BullsEye's Certificate should be conditioned upon the procurement of a
6 performance bond as described below, and filing proof of that performance
7 bond within 365 days from the date of an Order in this matter, or 30 days prior
8 to providing service, whichever comes first;
- 9 (b) that BullsEye be required to procure a performance bond in the initial amount
10 of \$25,000, with the minimum bond amount of \$25,000 to be increased if at
11 any time it would be insufficient to cover all advances, deposits, prepayments
12 collected from its customers, in the following manner: The bond amount
13 should be increased in increments of \$12,500, with such increases to occur
14 whenever the total amount of the advances, deposits or prepayments reaches a
15 level within \$2,500 under the actual bond amount; and
- 16 (c) that, if at some time in the future, BullsEye does not collect from its customers
17 any advances, prepayments or deposits, that BullsEye should be allowed to file
18 with the Commission a request for cancellation of its established performance
19 bond. Staff stated that after Staff review of such filing, Staff will forward its
20 recommendation on the matter to the Commission for a Decision.

21 13. Staff further recommended that BullsEye's resold local exchange Certificate should be
22 conditioned upon the following requirements: that if BullsEye wishes to discontinue service, it must
23 file an application with the Commission pursuant to A.A.C. R14-2-1107; that it must notify each of
24 its customers and the Commission 60 days prior to filing such an application to discontinue service;
25 and that if Applicant fails to make such notification 60 days prior to filing an application under
26 A.A.C. R14-2-1107, then it will forfeit its performance bond.

27 14. Staff recommended that if the Applicant fails to meet the timeframes outlined in
28 Findings of Fact. Nos. 11 and 12 above, then Applicant's resold local exchange Certificate should
become null and void without further Order of the Commission, and that no time extensions for
compliance should be granted.

15. The rates proposed by these filings are for competitive services.

16. Staff's recommendations as set forth herein are reasonable.

17. BullsEye's fair value rate base is determined to be zero for purposes of this

1 proceeding.

2 **CONCLUSIONS OF LAW**

3 1. Applicant is a public service corporation within the meaning of Article XV of the
4 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

5 2. The Commission has jurisdiction over Applicant and the subject matter of the
6 application.

7 3. Notice of the application was given in accordance with the law.

8 4. Applicant's provision of resold local exchange telecommunications services is in the
9 public interest.

10 5. Applicant is a fit and proper entity to receive the Certificate as conditioned herein for
11 providing competitive resold local exchange services in Arizona.

12 6. Staff's recommendations in Findings of Fact No. 8, 9, 10, 11, 12, 13, and 14 should be
13 adopted.

14 7. BullsEye's fair value rate base is not useful in determining just and reasonable rates
15 for the competitive services it proposes to provide to Arizona customers.

16 8. BullsEye's rates, as they appear in its proposed tariffs, are just and reasonable and
17 should be approved.

18 **ORDER**

19 IT IS THEREFORE ORDERED that the application of BullsEye Telecom, Inc. for a
20 Certificate of Convenience and Necessity for authority to provide competitive resold local exchange
21 services is hereby granted, conditioned upon its compliance with the conditions recommended by
22 Staff as set forth in Findings of Fact Nos. 10, 11, and 12 above.

23 IT IS FURTHER ORDERED that if BullsEye Telecom, Inc. fails to meet the timeframes
24 outlined in Findings of Fact. Nos. 11 and 12 above, then the resold local exchange Certificate of
25 Convenience and Necessity conditionally granted herein shall become null and void without further
26 Order of the Commission.

27 IT IS FURTHER ORDERED that if BullsEye Telecom, Inc. fails to notify each of its
28 customers and the Commission at least 60 days prior to filing an application to discontinue service

pursuant to A.A.C. R14-2-1107, that in addition to voidance of its resold local exchange Certificate of Convenience and Necessity, BullsEye Telecom, Inc.'s performance bond shall be forfeited.

IT IS FURTHER ORDERED that Staff's recommendations set forth in Findings of Fact Nos. 8, 9, 10, 11, 12, 13 and 14 above are hereby adopted.

IT IS FURTHER ORDERED that BullsEye Telecom, Inc. shall comply with the adopted Staff recommendations as set forth in Findings of Fact Nos. 10, 11, and 12 above.


IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.


CHAIRMAN COMMISSIONER COMMISSIONER


COMMISSIONER COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 21st day of June, 2005.


BRIAN C. McNEIL
EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

AP:mlj

1 SERVICE LIST FOR: BULLSEYE TELECOM, INC.

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